IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 85 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SYNBIOTICS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 85 of 1992

MR MANISH R BHATT for Petitioner No. 1

MR RK PATEL for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 22/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue,

the following question of law has been referred for our opinion for the assessment year 1974-75:-

"Whether, the Appellate Tribunal is right in law and on facts in deleting the interest charged u/s.216 of the Income-tax Act amounting to Rs.11,940/-?"

2. We have heard Mr MR Bhatt, learned Standing Counsel for the revenue and Mr RK Patel, learned counsel for the respondent-assessee.

3. The Inspecting Assistant Commissioner (Assessment) while passing order under Section 216 of the Income Tax Act observed that the assessee had willfully estimated its income at Rs.15 lakhs on 15.9.1973 and Rs.14.33 lakhs on 14.12.1973 and thereby deferred the payment to the Government exchequer. After calculations, he observed that the assessee had deferred the payment of Rs.1.66 lakhs for the first installment and Rs.66,000/- for the second installment. He, therefore, levied interest under Section 216 amounting to Rs.11,940/-.

The Commissioner of Income-tax (Appeals) not only relied on the decision of the Tribunal in the assessee's own case for the assessment year 1980-81 but also gave reasons for deleting interest charged under Section 216.

The Appellate Tribunal relied on its earlier decision in the assessee's own case for the assessment year 1980-81 and also decision of the Andhra Pradesh High Court in Additional CIT vs. Vazir Sultan Tobacco Company Ltd. (1980) 122 ITR 251 and confirmed the order made by the CIT (Appeals).

4. At the hearing of this reference, Mr MR Bhatt, learned Standing Counsel for the revenue has submitted that since the Tribunal had relied on its own earlier decision in assessee's own case for the assessment year 1980-81 which gave rise to Income Tax Reference No.170 of 1986 and in the said reference, this Court set aside the orders passed by the Tribunal and the Commissioner and remanded the matter to the Income-tax Officer for passing a fresh order as contemplated by Section 216 of the Act, (which decision is reported in 259 ITR 122), hence in the instant case also, the order passed by the Tribunal and the CIT (Appeals) in favour of the respondent-assessee may be set aside and the matter be remanded to the Income-tax Officer for passing a fresh order as contemplated by Section 216 of the Act.

5. On the other hand Mr RK Patel, learned counsel for the respondent-assessee has submitted that in the above case the matter was remanded to the Assessing Officer as he had not given any reasons for levying interest under Section 216 of the Act but in the instant case, the CIT (Appeals) has given detailed reasons for setting aside levy of interest under Section 216 and, therefore, there is no need for remanding the matter to the Assessing Officer.

6. We may, therefore, note at this stage the following reasons given by the CIT (Appeals) for setting aside levy of interest under Section 216 of the Act:-

> "... ... It is further seen that the total variation in the figure of actual sales of the assessee and those made the basis of the estimate for advance-tax has been marginal. In fact the variation in the figures upto July, 1973 has been for 0.01 lakhs (giving 0.01%) has less than the actuals and upto October, 1973 Rs.0.23 lakhs in excess (giving a percentage of variation of 0.17). ... ...
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> 3. In the present appeal, the question mainly is whether the assessee company had followed any new, unusual or a deliberately misleading method for submitting its estimate of income. The work sheets maintained by the assessee company for making out the tax calculations in respect of each year, reflect that the assessee had followed the same procedure, method, and basis of estimate of sales as in the past. Therefore, there is no indication of any supersession on the part of the assessee to suggest that the advance-tax was partly withheld. The I.A.C. has not brought any facts on record to suggest that the default, if any on the part of the assessee was deliberate. .."

7. Having heard the learned counsel for the parties, we are of the view that since the CIT (Appeals) has given cogent reasons for setting aside the levy of interest and looking to the smallness of the amount involved (i.e. Rs.11,940/-), it is not necessary to set aside the orders of the Tribunal and the CIT (Appeals) merely for remanding the matter to the Assessing Officer.

8. In view of the above discussion, our answer to the question is that the Appellate Tribunal is right in

law and on facts in confirming the order of the Commissioner (Appeals) in deleting the interest charged under Section 216 of the Income-tax Act amounting to Rs.11,940/-. We accordingly answer the question in the affirmative i.e. in favour of the assessee and against the revenue.

9. The Reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)

zgs/-